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9 *Attorneys for Emanation Communications Group LC*

10 **IN THE UNITED STATES DISTRICT COURT**  
 11 **FOR THE DISTRICT OF NEVADA**

12 LEX VEST LTD, a Nevada limited liability company;	Case no. 2:22-cv-01226-ART-BNW
13 Plaintiff,	
14 v.	INTERVENOR'S RESPONSE
15 EMANATION COMMUNICATIONS	TO
16 GROUP LC, a Utah limited liability	PLAINTIFF'S OPPOSITION (ECF 110)
17 company; DOES 1 through 50; and ROE	
18 ENTITIES 51 through 100, inclusive,	
Defendants.	
19	
20 Emanation Communications Group LC, a Utah limited liability,	
21 Counterclaim Plaintiff,	
22 v.	
23 Lex Vest Ltd, a Nevada limited liability company,	

1	Counterclaim Defendant	
2		
3		
4	Emanation Communications Group LC, a Utah limited liability,	
5	Third-Party Plaintiff,	
6	v.	
7	Lex Tecnica LTD, a Nevada limited liability company, Sam Castor, a manager of Lex Tecnica and Nevada resident, Adam Knecht, a manager of Lex Tecnica and Nevada resident, Nathan Morris, a manager of Lex Tecnica and Utah resident, and Braden John Karony, an individual and resident of Utah,	
11	Third-Party Defendants.	
12		

13

14 Jennifer Karony, Intervenor, responds to Plaintiff's opposition ECF 110, as  
15 follows:

16 This Court has original, first-filed jurisdiction and to date exclusive jurisdiction  
17 over Plaintiff's breach of contract claim. As such, it does not appear that the Utah State  
18 Court has jurisdiction to control Plaintiff's claim. The appointment of receiver and his  
19 powers are the subject of an appeal in Utah, *Ronin et al. v. Emanation, et.al.*, appellate  
20 case nos. 20230396-CA and 20230397-CA. Until those issues are decided, this Court  
21 should retain jurisdiction over Intervenor's motion, and potential counter-claims should  
22 Plaintiff proceed with its amended complaint against Jennifer Karony and others (ECF  
23 101-2).

1                   **1. This Court has original, first-filed jurisdiction and exclusive**  
2                   **jurisdiction over Plaintiff's breach of contract claim.**

3                   Plaintiff strategically chose to bring its breach claim in this Court, filed July 31,  
4                   2022 (ECF 1). Plaintiff intentionally chose not to sue Defendants in Utah State courts.

5                   Further, Plaintiff has not asserted its breach claim in the later-filed Utah  
6                   litigation. The Utah court does not have subject matter over Plaintiff's breach claim and  
7                   cannot assume it, let alone decide it when that issue is exclusively before this Court in  
8                   this action. To date, adjudication of Plaintiff's breach claim resides exclusively in this  
9                   Court.

10  
11                   **2. The receivership matter itself is still in question.**

12                   The matter of the receivership has not been fully decided. The Utah Court's  
13                   order granting a motion for appointment of a receiver and the Utah Court's separate order  
14                   appointing a receiver have been appealed in *Ronin et al. v. Emanation, et.al.*, appellate  
15                   case nos. 20230396-CA and 20230397-CA. A successful appeal will put aside any  
16                   alleged receivership issues.

17                   Issues in the appeal will include the error of the Utah Court to *de facto* decide or  
18                   control issues not before the Utah Court, including the merits of and defenses to  
19                   Plaintiff's breach claim upon which the Utah Court relied when granting the now  
20                   appealed orders.

21                   Because the controlling nature of the receivership is not settled the receivership  
22                   order of the Utah Court should not be presumed or deemed final and controlling.

1                   **3. The Receiver does not control Plaintiff's breach claim**

2                   In any event, Plaintiff's breach claim is not an asset of Emanation. Plaintiff is  
3                   not one of the receivership entities in the Utah litigation. As a result, Plaintiff's breach  
4                   claim does not appear to be within the scope of the Utah Court's defined asset over which  
5                   the Utah Court and the Receiver have control. The receivership order (ECF 108-1) does  
6                   not claim ownership of Plaintiff's breach claim, nor has Plaintiff shown that its breach  
7                   claim has been surrendered to the Receiver's control.

8                   Further, Plaintiff has made no showing that litigating liability of and defenses to  
9                   its breach claim will negatively impact a single asset in the receivership. If Plaintiff  
10                  proceeds independently against the personal guarantor Intervenor, there is no impact on  
11                  the assets of the receivership. If Intervenor's claims and defenses are successful the  
12                  value of the receivership assets will be diminished but will increase.

13  
14                  **4. The Utah Court appears to be attempting to exercise jurisdiction**  
15                  **over the breach claim not before it.**

16                  The receivership order (ECF 108-1) includes language as to what any party and  
17                  even non-receivership parties in the Utah litigation may and may not do in this separate,  
18                  first-filed action litigation. In the Utah litigation, the undersigned requested the Utah  
19                  Court to stay its proceeding pending resolution of the Plaintiff's breach claim filed in this  
20                  case. The Utah Court denied the request and proceeded to take evidence and testimony  
21                  related to Plaintiff's breach claim over objection.

1                   **5. Plaintiff's breach claim in this Court is continuing.**

2                   In Plaintiff's opposition (ECF 110), Plaintiff makes no representation about  
3                   dismissing its claims in this action. As a result, Plaintiff's breach claim continues.

4                   In relation to the breach claim, Plaintiff Lex Vest demanded that Intervenor sign  
5                   a personal guarantee as a condition of granting further loans. Plaintiff brought Intervenor  
6                   into this dispute. Defenses to breach of contract include those asserted in the ECG  
7                   amended answer and counterclaims (ECF 44).

8                   Even if ECG dismisses the counterclaims of ECF 44, Plaintiff's breach claim  
9                   may continue. Intervenor, and personal guarantor in the breach issue, has established her  
10                  lawful need to defend against any continuing claim that could posit liability in her under  
11                  the breach claim. The need for intervention is Plaintiff's own making.

12  
13                   **6. Intervenor's claims do not appear to be derivative of ECG's claims.**

14                  As shown in the loan papers asserted and filed by Plaintiff in this action,  
15                  Intervenor-Guarantor is a direct signature party to the loan agreement itself, not just as  
16                  Personal Guarantor, as shown in ECF 9-1, page 10 of 91. The loan agreement purports to  
17                  require Intervenor-Guarantor to perform acts of ECG if ECG does not perform them. For  
18                  example, at ECF 9-1, page 5 of 91, section 6 defines events of default of the loan  
19                  agreement including (i) if Guarantor fails "to perform any covenant, condition,  
20                  requirement, or agreement required to be observed or performed by Borrower[-ECG] ...  
21                  under this Agreement" in 6(a); and (ii) if Guarantor is proven to have made any false  
22                  warranty, representation or statement related to the loan in 6(c). This conduct of  
23                  Intervenor-Guarantor allegedly impacts compliance with the loan agreement directly.

1 Also, Intervenor is allegedly subject to liability independent of ECG:

2 As more particularly set forth in the Personal Guaranty, Guarantor shall be jointly and  
3 severally liable in the first instance for any default on the part of the Borrower without  
regard to whether collection remedies are pursued first as against the Borrower.

4 (ECF 9-1, pg. 9 of 91, section 24). If enforced, this could provide Plaintiff an independent claim  
5 against Intervenor.

6 These kinds of liability and involvement are direct, not derivative. Intervenor should not  
7 be denied the opportunity to defend herself as a signatory to the loan document and the separate  
8 Personal Guarantee.

9 **7. Potential remaining claims against Plaintiff**

10 Should Plaintiff elect not to pursue its amended claims against Jennifer Karony  
11 (ECF 101-2), Intervenor is not precluded from seeking claims against Plaintiff whether  
12 by this motion for intervention or by a separately filed action. It is judicially efficient to  
13 avoid duplicity to have Intervenor's claim continue in this action where the parties and  
14 many material documents related to Intervenor's claims are already before the Court  
15 and/or of record.

16 Intervenor has met the standards of intervention pertaining to both intervention by  
17 right and permissive intervention. Intervenor's motion to intervene against Plaintiff  
18 should be granted.

19 Dated this 7<sup>th</sup> day of June, 2023.

20 DUREN IP

21  
22 /s/ Todd E. Zenger

23 Todd E. Zenger  
Duren IP, PC  
610 E. South Temple Street

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**CERTIFICATE OF SERVICE**

I certify that the foregoing paper was filed using the Court CMF electronic filing system this 7<sup>th</sup> day of June 2023, thereby causing service upon the following with Ms. Renneker being served a copy separately at the email below:

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/s/ Todd E. Zenger